

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 307 of 1999

For Approval and Signature: sd/-

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

V G MIRANI

Appearance:

1. Appeal from Order No. 307 of 1999
MR RR MARSHALL for Petitioner No. 1
MR SG UPPAL for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 30/10/2001

ORAL JUDGEMENT

1. The Appellant - Corporation has challenged in this Appeal the impugned order dated 6.1.1999 passed by the learned Principal Judge, City Civil Court, Court

No.1, Ahmedabad, below Ex.5 in Civil Suit No.3481 of 1998 whereby the learned Judge allowed the Notice of Motion and granted interim relief in favour of the respondent - plaintiff in terms of Para : 10(a) of the said Application till final disposal of the Suit.

2. Learned Counsel Shri Marshal, appearing for the appellant - Corporation, vehemently submitted that the learned Judge was wholly in error in granting the injunction and allowing the Application Ex.5 when the plaintiff failed to prove prima facie case in his favour. He submitted that along with this Appeal the appellant also filed Civil Application No.11130 of 1990 for interim relief which was partly allowed by the learned Single Judge of this Court on 19.6.2000 whereby the learned Single Judge after considering the rival submissions made before him ordered that the interim injunction granted earlier shall apply and operate as far as the first floor immediately above the ground floor is concerned and the appellant shall not prevent the use of the premises on the first floor. While passing that order the learned Single Judge permitted the appellant - Corporation to take appropriate action in accordance with law in respect of any construction put up above the first floor except in respect of parapet walls upto the height of 2-1/2 ft. The learned Judge also allowed the appellant - Corporation to take appropriate action against the respondent for violation of the earlier order dated 4.10.1999 passed by this Court on Civil Application.

3. It appears that after passing of the aforesaid order by the learned Single Judge the request was made by the learned Counsel for the respondent (who is not present in the Court at the time of hearing today) to stay the operation of the order for a period of six weeks for approaching the Hon'ble Supreme Court. The said request was rejected.

4. On the face of the order it clearly appears that the learned trial Judge was wholly in error in allowing the Notice of Motion and granting the interim relief in terms of Para : 10(a) of the Application Ex.5. Therefore, the said order was required to be quashed. However, on Civil Application No.11130 of 1999 the learned Single Judge of this Court, after hearing both the learned Counsel for the parties, permitted the appellant Corporation to proceed against the respondent in accordance with law. Therefore, I am of the considered opinion that no interference is required and the ends of justice would be served, by observing that with the introduction of "The Gujarat Regularisation of

Unauthorised Development Act, 2001", under which after charging the impact fees the Corporation can regularise unauthorised construction provided the respondent plaintiff applies before the Corporation within 3 months from today.

5. Accordingly, while disposing of this Appeal the trial Court is directed to decide the main Civil Suit No.3481 of 1998 as early as possible and not later than 31st December, 2002. The parties shall fully cooperate with the final disposal of the Suit. If the respondent - plaintiff applies for regularising his construction under the new Act then the Appellant - Corporation shall consider his request by charging the impact fees under the new Act. If the respondent - plaintiff does not apply within 3 months then it will be open to the Corporation to proceed against the respondent - Corporation in accordance with law.

sd/-

Date : October 30, 2001 (B.J.Shethna, J.)

sas